

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Waste Reduction and Environmental Management and Parliamentary Secretary to the Minister for the Environment

Product Emissions Standards (Excise) Charges Act 2017

Product Emissions Standards (Excise) Charges Amendment Regulations 2021

Legislative Authority

The *Product Emissions Standards Act 2017* (the PES Act) establishes a national framework to address the adverse impacts of air pollution from certain products on human and environmental health. The PES Act and the *Product Emissions Standards Rules 2017* (the PES Rules) implement a key aspect of the National Clean Air Agreement established by Australia's Environment Ministers on 15 December 2015 and regulate 'emissions-controlled products'. Under that Agreement, a key initial action was the introduction of national emission standards for new non-road spark ignition engines and equipment. The PES Rules prescribe certain propulsion marine engines and non-road engines as 'emissions-controlled products' which must be certified as meeting the Australian emissions standard, or a recognised foreign standard, in order to be imported or supplied in Australia.

The *Product Emissions Standard (Excise) Charges Act 2017* (the Excise Charges Act) imposes a charge on the manufacture of emissions-controlled products to assist with the recovery of the costs of implementation, compliance and enforcement and other activities that support the delivery of the regulatory scheme.

Section 8 of the Excise Charges Act provides for the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Section 6 of the Excise Charges Act provides that the Governor-General may make regulations prescribing the amount of the charge or the method for calculating that amount.

Purpose

The *Product Emissions Standards (Excise) Charges Amendment Regulations 2021* (the Amendment Regulations) amend the *Product Emissions Standards (Excise) Charges Regulations 2018* (the Principal Regulations) to reduce the levy rate and the high value item threshold, and increase the manufacture threshold, for the purpose of calculating the amount of the charge imposed by the Excise Charges Act. This has the effect of reducing the overall amount of levy imposed on each levy payer per financial year and ensuring that the amount of levy reflects the actual costs of administering the PES Scheme. The *Product Emissions Standards (Customs) Charges Amendment Regulations 2021* make the same changes for the purposes of calculating levy imposed on the import of emissions-controlled products.

Consultation

The Department of Agriculture, Water and the Environment undertook consultation with industry and the public on cost recovery arrangements. The Cost Recovery Implementation Statement was released on 24 September 2021 for a one month public consultation period, proposing a reduction in the levy rate within the range of 0.33-0.38% and a reduction to the \$20,000 high value item threshold. Fifteen submissions were received from importers,

retailers and relevant industry peak bodies. Submissions supported the proposed changes to levy rate and high value item threshold and provided information that supported the financial forecasts on which the proposed rate and threshold were based. The levy rate is being set at 0.33%, and the high value item threshold reduced to \$10,000, in response to submissions.

Details and Operation

The Amendment Regulations is made for the purposes of section 6 of the Excise Charges Act. The Excise Charges Act specifies no conditions that need to be satisfied before the power to make the Amendment Regulations may be exercised.

The Amendment Regulations is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commence retrospectively on 1 July 2021. This ensures that the Amendment Regulations take effect for the 2021-22 financial year (with invoices issued in November 2022, consistent with the current operation of the PES Scheme). This timeframe allowed for comprehensive consultation to be done with industry and the public. As the Amendment Regulations reduce the overall amount of charges for a liable person, no person other than the Commonwealth is disadvantaged and so the amendment is not contrary to section 12 of the *Legislation Act 2003*.

Details of the Amendment Regulations are set out in the Attachment A.

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

Details of the *Product Emissions Standards (Excise) Charges Amendment Regulations 2021*

Section 1 - Name

1. This section provides that the name of the regulations is the *Product Emissions Standards (Excise) Charges Amendment Regulations 2021* (the Amendment Regulations).

Section 2 - Commencement

2. This section provides that the Amendment Regulations commence retrospectively on 1 July 2021. This ensures that the amendments outlined in Schedule 1 of the Amendment Regulations take effect for the 2021-22 financial year. As the Amendment Regulations reduce the overall amount of charges for a liable person, no person other than the Commonwealth is disadvantaged.

Section 3 - Authority

3. This section provides that the Amendment Regulations are made under the *Product Emissions Standards (Excise) Charges Act 2017* (the Excise Charges Act).

Section 4 - Schedules

4. This section provides that each instrument that is specified in a Schedule to the Amendment Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.
5. This enables the amendment of the *Product Emissions Standards (Excise) Charges Regulations 2018* (the Principal Regulations).

Schedule 1 - Amendments

Product Emissions Standards (Excise) Charges Regulations 2018

Item [1] - Before section 1

6. Item 1 inserts a new heading for the new “Part 1 - Preliminary” before section 1 of the Principal Regulations.

Item [2] - Section 4 (definition of *product price*)

7. The method of working out the amount of charge to be imposed on the manufacture of emissions-controlled products is set out in the Principal Regulations as the levy rate multiplied by the value of the emissions-controlled product. The value of the emissions-controlled product is subject to both a high item value threshold and a manufacture threshold.
8. The definition of *product price* in section 4 of the Principal Regulations gives effect to the high item value threshold, which limits the value of the emissions-controlled

product for the purposes of calculating the amount of charge even if the value of the product is greater than that threshold.

9. Item 2 amends the definition of *product price* in section 4 of the Principal Regulations to omit references to \$20,000 (wherever occurring) and substituting it with \$10,000. This amendment sets the new high item value threshold, which has the effect that the charge amount is calculated using a product price of \$10,000 if the price of the product when a person makes a first supply of the product is greater than that amount. This new threshold ensures that the amount charged closely matches the estimated administrative costs of the scheme, as analysis of manufacture data shows that there are no extra administrative costs to the Department in administering the scheme for manufactured products valued higher than this amount.
10. The term *price* of an emissions-controlled product is defined in section 4 of the Principal Regulations as so far as the consideration for the supply is consideration expressed an amount of money - that amount excluding Goods and Services Tax (GST); and so far as the consideration is not consideration as an amount of money - the GST exclusive market value of the supply.

Item [3] - Before section 5

11. Item 3 inserts a new heading for the new “Part 2 - Charge on the importation of emissions-controlled products” before section 5 of the Principal Regulations.

Item [4] - Subsection 5(3) (formula)

12. The manufacture threshold is given effect through section 5 of the of the Principal Regulations and acts as a low value threshold. The purpose of the manufacture threshold is to ensure that only a person whose total of emissions-controlled products manufactured in a financial year would result in an excise charge of more than a certain amount for that financial year would be required to pay the excise charge. If a person manufactures emissions-controlled products that would result in an excise amount equal or less than this amount for the financial year, the person would not be required to pay any charge (see subsection 5(2) of the Principal Regulations). In this way, the application of the manufacture threshold depends on the value of all emission-controlled products manufactured by the person over an entire financial year.
13. Subsection 5(3) of the Principal Regulations sets out the formula for calculating the amount of charge where a person passes the manufacture threshold for the financial year at the time of manufacture.
14. Item 4 amends the formula at subsection 5(3) of the Principal Regulations so that the amount of charge imposed on a product in these circumstances is the total product price multiplied by 0.0033. This amendment has the effect of reducing the levy rate for such manufacturers, thereby reducing the amount of charge payable.
15. The existing definition of *total product price* in subsection 5(3) continues to apply, which is the sum of the product prices of each emissions-controlled product that the

person has manufactured at the time the person passes the manufacture threshold for the financial year. The term *product price* is defined in section 4 of the Principal Regulations, as amended by item 2.

Item [5] - Subsection 5(4)

16. Subsection 5(4) of the Principal Regulations sets out the method for calculating the amount of charge where a person has already passed the manufacture threshold for the financial year at the time of manufacture.
17. Item 5 amends the levy rate set out in subsection 5(4) of the Principal Regulations to omit the reference to 0.0045 and substitute 0.0033. This means that the amount of charge imposed on the manufacture of an emissions-controlled product in these circumstances is the product price multiplied by 0.0033. This amendment has the effect of reducing the levy rate for such manufacturers, thereby reducing the amount of charge payable.
18. The term *product price* is defined in section 4 of the Principal Regulations, as amended by item 2.

Item [6] - Subsection 5(5)

19. Subsection 5(5) of the Principal Regulations sets out when the manufacture threshold is passed. As outlined above, if and when a person passes the manufacture threshold during a financial year determines whether the person is required to pay an excise charge and the method of calculating the excise charge.
20. Item 6 amends subsection 5(5) of the Principal Regulations to omit the reference to \$32,000 and substitute \$44,000. This amendment sets a new manufacture threshold of \$44,000. This has the effect that a person passes the manufacture threshold for the financial year if the sum of the product price of the product manufactured, and the product prices of any other products previously manufactured by the person in the same financial year, is more than \$44,000.

Item [7] - At the end of the instrument

21. Section 7 of the Excise Charges Act provides that charge is imposed on the manufacture of an emissions-controlled product. This means that the applicable charge is calculated and imposed at the time of manufacture.
22. Item 7 inserts a new Part 3 (section 6) relating to transitional, application and savings provisions. New section 6 provides that the amendments made by this Schedule apply in relation to emissions-controlled products that are manufactured on or after the commencement day of 1 July 2021. Because the Amendment Regulations commence retrospectively, the application provision ensures that the excise charges for emissions-controlled products which were manufactured in the 2021-2022 financial year prior to the Amendment Regulations being made is calculated in accordance with the Principal Regulations, as amended by the Amendment Regulations. This is necessary as the calculation of charges depends on the value of all emissions-controlled products manufactured over an entire financial year. It also allows all manufacturers of

emissions-controlled products in the 2021-2022 financial year to be subject to the same levy rates.

Excise Charge Example

A person manufactures an emissions-controlled product (item 1) in August 2021 with a product price of \$10,000. It is the person's first manufacture of an emissions-controlled product in the 2021-2022 financial year. The excise charge for item 1 is nil as the manufacture threshold of \$44,000 has not been passed in the financial year (see subsection 5(2) of the Principal Regulations, as amended by the Amendment Regulations).

The same person then manufactures three emissions-controlled products (items 2, 3 and 4) in December 2021 with the product price of \$9,000 each. The person has now manufactured four products with product prices totalling \$37,000. The excise charge for items 2, 3 and 4 is nil as the manufacture threshold has not been passed yet for products manufactured in the 2021-2022 financial year (see subsection 5(2) of the Principal Regulations, as amended by the Amendment Regulations).

The same person then manufactures another emissions-controlled product (item 5) in February 2022 with the product price of \$8,000. The person has now manufactured five products during the 2021-2022 financial year with product prices totalling \$45,000. The excise charge for item 5 is \$148.50 ($\$45,000 \times 0.0033$) as the manufacture threshold has been passed during the 2021-2022 financial year (see subsection 5(3) of the Principal Regulations, as amended by the Amendment Regulations).

The same person then manufactures two more emissions-controlled products (items 6 and 7) in May 2022. Item 6 has a price of \$15,000 but has a product price of \$10,000 due to the operation of the high item value threshold. Item 7 has a product price of \$1,000. The excise charge for item 6 is \$33 ($\$10,000 \times 0.0033$) and for item 7 is \$3.30 ($\1000×0.0033) (see subsection 5(4) of the Principal Regulations, as amended by the Amendment Regulations).

The total excise charge that the person will be liable to pay for the 2021-22 financial year is:

Item 1 charge (nil) + item 2 charge (nil) + item 3 charge (nil) + item 4 charge (nil)
+ item 5 charge (\$148.50) + item 6 charge (\$33) + item 7 charge (\$3.30) =
\$184.80

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Product Emissions Standards (Excise) Charges Amendment Regulations 2021

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Product Emissions Standards Act 2017* (the PES Act) establishes a national framework to address the adverse impacts of air pollution from certain products on human and environmental health. The PES Act and the *Product Emissions Standards Rules 2017* (the PES Rules) implement a key aspect of the National Clean Air Agreement established by Australia's Environment Ministers on 15 December 2015 and regulate 'emissions-controlled products'. Under that Agreement, a key initial action was the introduction of national emission standards for new non-road spark ignition engines and equipment. The PES Rules prescribe certain propulsion marine engines and non-road engines as 'emissions-controlled products' which must be certified as meeting the Australian emissions standard, or a recognised foreign standard, in order to be imported or supplied in Australia.

The *Product Emissions Standard (Excise) Charges Act 2017* (the Excise Charges Act) imposes a charge on the manufacture of emissions-controlled products to assist with the recovery of the costs of implementation, compliance and enforcement and other activities that support the delivery of the regulatory scheme.

The *Product Emissions Standards (Excise) Charges Amendment Regulations 2021* (the Amendment Regulations) amend the *Product Emissions Standards (Excise) Charges Regulations 2018* (the Principal Regulations) to reduce the levy rate and the high value item threshold, and increase the manufacture threshold, for the purpose of calculating the amount of the charge imposed by the Excise Charges Act. This has the effect of reducing the overall amount of levy imposed on each levy payer per financial year and ensuring that the amount of levy reflects the actual costs of administering the PES Scheme.

Human Rights Implications

The Amendment Regulations amend the Principal Regulations to update the cost recovery settings for the Product Emissions Standards scheme, consistent with the Australian Government Charging Framework. Therefore, the Amendment Regulations do not engage any of the applicable rights or freedoms.

Conclusion

The Amendment Regulations is compatible with human rights because it does not raise any human rights issues.

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